

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document #

32

HERNANDEZ

-v-

PHILLIPS

U.S.C.A. # 07-3702-pr

U.S.D.C. # 02 cv 9098

JUDGE: Robert Sweet

DATE: 10/16/07

INDEX TO THE RECORD ON APPEAL

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DISTRICT COURT DOCKET ENTRIES

DOCUMENT DESCRIPTION

DOC. #

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

☒ Original Record

☐ Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 16th Day of October, 2007.

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HERNANDEZ

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Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 31, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed	Document Description
<u>10/24/03</u>	<u>Endorsement on letter to Judge Sweet by Juan Hernandez 10/21/03</u>
<u>8/5/04</u>	<u>Endorsed letter to Judge Sweet from Juan Hernandez 7/16/04</u>
<u>8/18/04</u>	<u>Letter to Judge Sweet from Juan Hernandez 7/12/04</u>
<u>3/24/05</u>	<u>Order that Hernandez petition for habeas corpus is transferred to suspense docket</u>

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 16th day of October In this year of our Lord, Two Thousand and Seven, and the Independence of the United States this 232ND year.

J. Michael McMahon, Clerk

By [Signature]
Deputy Clerk

APPEAL CLOSED

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:02-cv-09098-RWS
Internal Use Only

Hernandez v. Phillips, et al

Assigned to: Judge Robert W. Sweet

Demand: \$0

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 11/14/2002

Date Terminated: 07/25/2007

Jury Demand: None

Nature of Suit: 530 Habeas Corpus (General)

Jurisdiction: Federal Question

Date Filed	#	Docket Text
11/14/2002	<u>1</u>	Order endorsed on declaration in support of request to proceed in forma pauperis; L.F.P. request is granted. (signed by Judge Milton Pollack) (laq) (Entered: 11/15/2002)
11/14/2002	<u>2</u>	PETITION for writ of habeas corpus pursuant to 28 USC 2241. (laq) (Entered: 11/15/2002)
11/14/2002	<u>3</u>	MEMORANDUM OF LAW by Juan Hernandez in support of [2-1] petition . (laq) (Entered: 11/15/2002)
11/14/2002		Magistrate Judge Gabriell W. Gorenstein is so designated. (laq) (Entered: 11/15/2002)
11/26/2002	<u>4</u>	Notice of Case Reassignment to Judge Robert W. Sweet . Copy of notice and judge's rules mailed to Attorney(s) of record: Betsy Hutchings . (jol) (Entered: 12/02/2002)
12/09/2002	<u>5</u>	Order endorsed on declaration in support of request to proceed in forma pauperis; L.F.P.; request is granted. (signed by Judge Milton Pollack/Part I) (kw) (Entered: 12/10/2002)
01/31/2003	<u>6</u>	Order that the clerk shall serve a copy of this order and petition upon Attorney General of the State of New York and shall send a copy of this order by certified mail to petitioner. I direct that the respondents file an answer or motion within 40 days of the date of this order. (signed by Judge Robert W. Sweet) (Sent a copy of the order and the petition to the Attorney General by cert. mail (70012510000566990740), ret. rec. req.) (Sent a copy of the order to the petitioner by cert. mail (70012510000566990757), ret. rec. req.) Cert. mails received. (kw) Modified on 03/03/2003 (Entered: 02/04/2003)
03/19/2003	<u>7</u>	Memo-Endorsement on letter addressed to Judge Sweet from Morrie I. Kleinbart, dated 3/12/03: Granting respondents' request for extension of time until 5/29/03 to respond to the petition . (signed by Judge Robert W. Sweet). (tp) (Entered: 03/20/2003)
04/23/2003	<u>8</u>	Letter filed by Juan Hernandez addressed to Tamar Ezer, clerk to Judge Sweet from Juan Hernandez, dated 4/10/03, re: response to chambers 4/7/03 letter. (db) (Entered: 04/24/2003)
05/02/2003	<u>9</u>	PETITIONER'S PRO-SE HABEAS CORPUS ADDENDUM by Juan Hernandez. (rag) (Entered: 05/02/2003)
05/13/2003	<u>10</u>	Memo-Endorsement on letter addressed to Judge Sweet from Richard Nahas, dated 5/6/03. Counsel for respondents requests until 8/15/03 to respond to the petition. Application granted . (signed by Judge Robert W. Sweet) (sb) (Entered: 05/15/2003)
06/09/2003	<u>11</u>	AFFIDAVIT OF SERVICE of copies of petitioner's "Supplement to Petitioner's Pro Se Memorandum of LAW by certified mail on 5/30/03 to SDNY - Chambers of Judge Sweet); District Atty and ADA Richard Nahas. (djc) (Entered: 06/11/2003)
06/09/2003	<u>12</u>	Petitioner's Pro-Se Habeas Corpus Supplement to Petitioner's Pro-Se Memorandum of Law by Juan Hernandez. (djc) (Entered: 06/11/2003)
08/05/2003	<u>13</u>	Memo-Endorsement on letter addressed to Judge Sweet from Richard Nahas, dated 7/28/03. Re: counsel for respondents requests an extension of time to respond to petition to and including 9/2/03. Application granted . (signed by Judge Robert W. Sweet) (db) (Entered: 08/11/2003)
09/03/2003	<u>14</u>	ANSWER to Complaint by Elliot Spitzer (Attorney Richard Nahas). (jco) (Entered: 09/05/2003)
09/03/2003	<u>15</u>	MEMORANDUM OF LAW by William Phillips, Elliot Spitzer in support of [14-1] answer. (jco) (Entered: 09/05/2003)
09/04/2003	<u>16</u>	STATE COURT TRANSCRIPT of record of proceedings in Supreme Court of the State of New York, County of New York. State Court case # 13308/92. Before the Honorable Judge Edward McLaughlin for date(s) of 1/26/99. (df) (Entered: 09/12/2003)
09/04/2003	<u>17</u>	STATE COURT TRANSCRIPT of record of proceedings in Supreme State Court, County of New York, State Court Case # 13308/92, (Trial Testimony Vol. 1) before the Honorable Judge Edward McLaughlin for date(s) of 5/16/94. (df) (Entered: 09/12/2003)

09/04/2003	18	STATE COURT TRANSCRIPT of record of proceedings in Supreme State Court, County of New York, State Court Case # 13308/92, (Trial Testimony Vol. 2) before the Honorable Judge Edward McLaughlin for date(s) of 5/16/94. (df) (Entered: 09/12/2003)
09/04/2003	19	STATE COURT TRANSCRIPT of record of proceedings in Supreme State Court, County of New York, State Court Case # 13308/92, (Trial Testimony Vol. 3) before the Honorable Judge Edward McLaughlin for date(s) of 5/16/94. (df) (Entered: 09/12/2003)
09/04/2003	20	STATE COURT TRANSCRIPT of record of proceedings in Criminal Court, County of New York, State Court Case # 92N96738 before the Honorable Judge Alfred Donati for the date(s) 12/8/92 (Pre-Trial 1) date(s) of 12/8/92. (df) (Entered: 09/12/2003)
09/04/2003	21	STATE COURT TRANSCRIPT of record of proceedings in Supreme State Court, County of New York, State Court Case # 13308/92, before the Honorable Judge Rose L. Rubin for the date(s) of 11/8/93. (Pre-Trial 2) (df) (Entered: 09/12/2003)
10/01/2003	22	REPLY Memorandum by Juan Hernandez in support of [2-1] petition (dlc) (Entered: 10/02/2003)
10/06/2003	23	Memo-Endorsement on letter addressed to Judge Sweet from Juan Hernandez, dated 10/06/03; granting Petitioners requests for an extension of time to file a traverse in response to the Memorandum of Law in support of the answer opposing Petitioners Petition. (signed by Judge Robert W. Sweet); (pl) (Entered: 10/07/2003)
10/28/2003	24	Memo-Endorsement on letter addressed to Judge Sweet from Juan Hernandez, dated 10/21/03, petitioner requests permission to submit an over size traverse in this case. Application granted. (signed by Judge Robert W. Sweet); (yv) (Entered: 10/29/2003)
08/02/2004	25	ENDORSED LETTER addressed to Judge Robert W. Sweet from Juan Hernandez dated 7/16/04 re: the petitioners motion for a stay is stricken from the calendar as requested. (Signed by Judge Robert W. Sweet on 7/29/04) (db.) (Entered: 08/05/2004)
08/08/2004	26	LETTER addressed to Judge Robert W. Sweet from Juan Hernandez dated 7/2/04 re: petitioner writes to the Court requesting that this case be put on hold, while he pursue a sentence issue in the lower court. Document filed by Juan Hernandez.(pl,) (Entered: 08/11/2004)
03/24/2005	27	ORDER that Hernandez' petition for habeas corpus relief is transferred to the suspense docket of this court pending further order of the court. (Signed by Judge Robert W. Sweet on 3/23/05) (dlc,) (Entered: 03/25/2005)
04/18/2006	28	ENDORSED LETTER addressed to Judge Robert W. Sweet from Kerry Elgarten dated 4/11/06 re: Request that the matter be removed from the suspense calendar. ENDORSEMENT: So Ordered. (Signed by Judge Robert W. Sweet on 4/14/06) (js.) (Entered: 04/19/2006)
07/20/2007	29	OPINION # 94948. For the reasons set forth within, the petition will be denied. A certificate of appealability will not issue. Any appeal taken from this order would not be taken in good faith. (Signed by Judge Robert W. Sweet on 7/17/07) (kco) (Entered: 07/25/2007)
07/25/2007		Transmission to Judgments and Orders Clerk. Transmitted re: [29] Memorandum & Opinion. to the Judgments and Orders Clerk. (kco) (Entered: 07/25/2007)
07/25/2007	30	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion dated July 17, 2007, the petition for a writ of habeas corpus is denied; the Court does not issue a certificate of appealability and finds that any appeal from the Opinion dated July 17, 2007 would not be taken in good faith. (Signed by J. Michael McMahon, clerk on 7/25/07) (ml) (Entered: 07/25/2007)
07/26/2007		Mailed notice of Right to Appeal re: [30] Clerk's Judgment, to Attorney(s) of Record: Betsy Hutchings, Richard Nahas. (tve) (Entered: 09/07/2007)
08/24/2007	31	NOTICE OF APPEAL from [30] Clerk's Judgment, [29] Memorandum & Opinion. Document filed by Juan Hernandez. Copies sent to attorney(s) of record: District Attorney, NYC. (tp) (Entered: 08/27/2007)
08/24/2007		Appeal Remark as to [31] Notice of Appeal filed by Juan Hernandez. \$ 455.00 APPEAL FEE DUE. (tp) (Entered: 08/27/2007)
08/27/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: [31] Notice of Appeal. (tp) (Entered: 08/27/2007)
08/27/2007		Transmission of Notice of Appeal to the District Judge re: [31] Notice of Appeal. (tp) (Entered: 08/27/2007)